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सं. 13]

नई दिल्ली, शनिवार, जून 27, 1998/आषाढ़ 6, 1920

No. 13]

NEW DELHI, SATURDAY, JUNE 27, 1998/ASADHA 6, 1920-

इस भाग में निम्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)

PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (सब राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किये गये आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than the Administrations of Union
Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 12 जून, 1998

आ.अ. 40.—लोक प्रतिनिधित्व अधिनियम, 1951
(1951 का 43) की धारा 106 के अनुसरण में निर्वाचन
आयोग एतद्वारा निर्वाचन अर्जी सं. 6/96 में दिया गया
पटना उच्च न्यायालय पटना का तारीख 8-12-97 का
आदेश प्रकाशित करता है।

(आदेश अधिसूचना के अंग्रेजी भाग में छपा है)

[सं. 82/बिहार/(6/96)/98]

आदेश में,

वी.एन. चावला, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 12th June, 1998

O.N. 40.—In pursuance of Section 106 of the Representa-
tion of the People Act, 1951 (43 of 1951) the Election
Commission hereby publishes the order dated the 8-12-97 of

the High Court of Judicature at Patna in Election Petition
No. 6 of 1996.

IN THE HIGH COURT OF JUDICATURE AT PATNA
E. P. No. 6/96

BETWEEN :

Ram Sunder Das vs. Ram Vilas Paswan

For the petitioners : J. P. Shukla, Sr. Advocate,

A. K. Singh, A. Shukla, S. Kr. Tiwari,
Advocates.

For the respondent no. 1 : Mr. Ganga Pd. Roy.

22- 8-12-97. Heard.

By this election petition the election petitioner has called
in question the election of sole respondent Ram Vilas Paswan
to the 11th Parliament from 8, Hajipur (Reserved) Parlia-
mentary Constituency. The ground was that there was large
scale bungling in counting of ballot papers. Therefore, there
is a prayer for re-counting and declaration that the petitioner
was duly elected, if he is found to have secured majority of
valid votes polled. There is no allegation of corrupt prac-
tice on the part of the sole respondent, namely, the returned

candidate or any body on his behalf. It is stated that the 11th Parliament has since been dissolved and fresh elections to the House called.

In this view of the matter, the present election petition has become infructuous and is dismissed as such.

Sd/- (G. S. Chaube)

[No. 82/BR/(6/96)/98]

By order,
B. N. CHAWLA, Secy.

नई दिल्ली, 12 जून, 1998

आ.अ. 41.—नोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में निर्वाचन आयोग एतद्वारा निर्वाचन अर्जी सं. 8/96 में दिया गया पटना उच्च न्यायालय पटना का तारीख 15-12-97 का आदेश प्रकाशित करना है।

(आदेश अधिसूचना के अंग्रेजी भाग में छपा है)

[सं. 82/बिहार(8/96)/98]

आदेश से,

बी.एन. चावला, सचिव

New Delhi, the 12th June, 1998

O.N. 41.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission hereby publishes the Order dated the 15-12-97 of the High Court of Judicature at Patna in Election Petition No. 8 of 1996.

IN THE HIGH COURT OF JUDICATURE AT PATNA
E. P. No. 8 of 1996

Shakuni Choudhary vs. Anil Kumar Yadav & ors.
For the petitioner : None.

For respondent no. 1 : Mr. A. C. Nirankar,
19. 15-12-97. Nobody is present on behalf of the election petitioner. However, learned counsel for respondent no. 1 is present.

By filing this petition the election petitioner has called in question the election of respondent no. 1 Anil Kumar Yadav to 31-Khagaria Parliamentary Constituency. The ground is that there was irregularity in counting of the valid votes polled. Consequently, the prayer has been made for re-counting and if in re-counting the election petitioner is found to have secured majority of valid votes polled he should be declared elected.

The learned counsel for respondent no. 1 informs that 11th Parliament has since been dissolved and election to the lower house is likely to be held in near future. There is no allegation of any type of corrupt practice on the part of the returned candidate, namely, respondent no. 1, or anybody on his behalf.

In this view of the matter, the election petitioner has become infructuous and dismissed as such.

Sd/- (G. S. Chaube)

[No. 82/BR/(8/96)/98]

By order,
B. N. CHAWLA, Secy.

नई दिल्ली, 12 जून, 1998

आ.अ. 42.—नोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में निर्वाचन

आयोग एतद्वारा निर्वाचन अर्जी सं. 1/94 में दिया गया पटना उच्च न्यायालय पटना का तारीख 18-12-1997 का आदेश प्रकाशित करता है।

(आदेश अधिसूचना के अंग्रेजी भाग में छपा है)

[सं. 82/बिहार(1/94)/98]

आदेश से,

बी.एन. चावला, सचिव

New Delhi, the 12th June, 1998

O.N. 42.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission hereby publishes the Order dated the 18-12-1997 of the High Court of Judicature at Patna in Election Petition No. 1 of 1994.

ELECTION PETITION NO. 1 OF 1994.

In the matter of an application under Sections 80, 80-A and 81 of the Representation of People Act, 1951.

Smt. Kishori Sinha

..Petitioner.

Versus

Mrs. Lovely Anand

..Respondent.

For the petitioner : Mr. A. K. Singh.

For the respondent : Mr. S. B. K. Mangalam.

PRESENT :

THE HON'BLE MR. JUSTICE G. S. CHAUBE,

G. S. Chaube, J.—The lower house of the Parliament stood twice dissolved after presentation of this election petition through which the election of a returned candidate from 9-Vaishali Parliamentary Constituency in course of a bye-election has been sought to be annulled. As a matter of fact, since then one election was already held for the said constituency after dissolution of the House in the year 1996 : and another election is impending in consequence of very recent dissolution of the same House. Ordinarily, the election petition should have been treated as infructuous but for the penal consequences entailing disqualification of the returned candidate if the allegation of commission of corrupt practices on the ground of which alone the election of the returned candidate has been sought to be set aside, is established.

2. It appears that in consequence of the death of the sitting Member of Parliament from 9-Vaishali Parliamentary Constituency bye-election was called and a notification to this effect was published. In the said bye-election the election petitioner and the sole respondent Mrs. Lovely Anand wife of Shri Anand Mohan, besides 72 others, had staked their fortune for being elected. The polling for the bye-election took place on 26-5-1994, re-polling at some polling stations on 28-9-1994 : and the counting of votes commenced on 29-5-1994. After the counting the sole respondent was declared elected with a

margin of 18,972 votes from her nearest rival, namely, the present petitioner Smt. Kishori Sinha. While the sole respondent had fought the election as an independent candidate even though she was sponsored by a political party named Bihar Peoples Party, the election petitioner was the official candidate of Janta Dal, the party in power at the relevant time. The result of the election was declared on 31-5-1994.

3. Aggrieved by the declaration of the sole respondent as the returned candidate the petitioner has sought a declaration that the election of the sole respondent is void on the ground that she is guilty of committing corrupt practices within the meaning of section 123 of the Representation of People Act, 1951 (in short, "R. P. Act"). After the election petition was presented in this Court on 14-7-1994 notice thereof was served on the sole respondent. However, the sole respondent did not appear even after service of notice. Consequently, the election petitioner was directed to take steps for summoning of witnesses, etc. In the meantime, on 27-7-1995 the sole respondent appeared through vakalatnama and took her time for filing written statement which was never filed. Consequently, the election petition was directed to be heard *ex parte*. However, before hearing of the election petition could commence the sole respondent filed fresh vakalatnama in favour of another counsel Shri S. B. K. Mangalam and filed an application purporting to be under Order VII rule 11 read with Order VI rule 16 of the Code of Civil Procedure and section 86 and 87 of the R. P. Act for dismissing the election petition in limine on the ground that the election petition was lacking in concise statement of material facts and essential particulars respecting the alleged corrupt practices and that the requirement of the provision of section 81 (3) of the R. P. Act was not strictly complied with. Consequently, both sides were heard on the preliminary issues whether the election petition lacks in statement of material facts and full particulars of the allegation of corrupt practices on which the election of the sole respondent has been sought to be nullified; and secondly, whether true copy of the election petition in all respect was served on the sole respondent pursuant to the provision of sub-section (3) of section 81 of the R. P. Act.

4. Before entering into the controversy it is necessary to have a cursory look on the contents of different paragraphs of the election petition. Paragraphs 1 to 11 of the election petition are merely introductory in nature as much as they contain statements regarding the reason for bye-election to the Parliamentary Constituency in question, i.e. death of the sitting Member of Parliament, the date of notification by the President of India calling upon the bye-election to the said Constituency, the dates of filing nomination papers by different candidates, their scrutiny and withdrawal, polling, re-polling, counting of votes and declaration of the result, the names of the candidates whose nomination papers were found valid, and election symbols allotted to each of them. Paragraph 12 contains the grounds on which the election of the sole respondent is sought to be declared valid. Paragraph 13 contains statements regarding the nature of assis-

tance and help of the gazetted officers, particularly, the District Magistrate-cum-Returning Officer obtained by the sole respondent for furtherance of her success in the bye-election. Paragraph 14 contains statements regarding Commission of certain acts by the sole respondent in collusion with the Returning Officer in getting ballot papers marked in favour of some other candidates mixed with those marked in her favour. Paragraph 15 relates to the statement respecting non-observance of rules at the time of counting, particularly, in respect of rejection of votes without giving proper opportunity to the counting agents of the candidates. Paragraph 16 contains statement regarding arbitrary and illegal rejection of genuine ballot papers of two assembly segments of the Constituency. Paragraph 17 contains statements regarding the presence of undesirable elements of the camp of Bihar Peoples Party in the Constituency on 24-5-1994, i.e. prior to the date of polling. Paragraph 18 is respecting omission on the part of the Returning Officer to declare certain booths as sensitive on the request of the election petitioner. Paragraph 19 contains statements respecting flag march of C.R.P.F. and B.S.F. only in the areas where the supporters of the election petitioner were residing with a view to get them panicky and fear stricken at the instance of the sole respondent. Paragraph 20 contains statement regarding alleged distribution of firearms and explosive materials, etc., by the husband and election agent of the sole respondent in the Constituency and disinclination of the Returning Officer to seize those arms, etc., Paragraph 21 contains statements regarding acts of booth capturing on the date of polling in all the six assembly segments of 9-Vaishali Parliamentary Constituency. Paragraph 22 contains statements regarding filing of petition before the Returning Officer alleging the acts of booth capturing. Paragraph 23 contains statement regarding inaction and connivance on the part of the authorities leading to large scale booth capturing by the men and supporters of the sole respondent. Paragraph 24 deals with evidence to prove the story of booth capturing, while paragraph 24(A) contains statement that even though the election petitioner had acquired majority of valid votes in the bye-election, she got defeated. Paragraph 25 contains statement of some acts of the Returning Officer after declaration of the result. Paragraph 26 contains statements that the election petition was presented within a period of 45 days from the date of the declaration of the result on 31-5-1994. Paragraph 27 contains statement regarding filing of an extra copy duly attested by and under the signature of the election petitioner, and paragraph 28 contains averment why the sole respondent alone has been impleaded in this petition. Paragraph 29 contains averment respecting deposit of a sum of Rs. 2,000 in this Court as security of cost of the petition as required s/s 117 of the R.P. Act. With the election petition certain documents including affidavit in Form 25 have been annexed and they are to be found at pages 37 to 74 of the election petition.

5. As stated earlier, the election of the sole respondent has been sought to be annulled on the ground of commission of certain corrupt practices by her and her husband and election agent Shri Anand Mohan. The learned counsel for the sole respondent has contended that the statements made in paragraph 12 to

24(A) do not constitute material facts and are entirely lacking in particulars necessary to make out a case of corrupt practices. He has further contended that those statements are unnecessary, entirely vague, scandalous, frivolous, and liable to be struck off. Section 83(1) of the R.P. Act provides, inter alia, that election petition (a) shall contain a concise statement of the material facts on which the petitioner relies and (b) set forth full particulars of any corrupt practice the election petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice.

6. Paragraph 12 of the election petition states that the election of sole respondent was illegal and fit to be declared void on the ground of commission of corrupt practice of procuring and obtaining the assistance of a gazetted officer, the District Magistrate of Muzaffarpur and also commission of corrupt practice of undue influence in booth capturing. Manifestly, this particular paragraph does not contain material facts and full particulars of the alleged corrupt practices. However, paragraph 13 of the election petition avers that the sole respondent procured and obtained the help of the "gazetted officer", namely, the District Magistrate-cum-Returning Officer for furtherance of her success in the election like appointment of the Presiding Officers of her choice, locating venue of counting the ballot papers at L.S. College, reception of void votes in her favour, counting of invalid ballot papers pertaining to those booths where more than 90% votes were said to have been polled, mixing of ballot papers of the petitioner in favour of the sole respondent and also mixing the ballot papers of other contesting candidates and counting the same also in her favour; and commission of other illegality in the counting for receiving success in her election. A full particulars of the aforesaid corrupt practices purport to be annexed with the election petition as Schedule-A. In law, the said Schedule-A forms part of the election petition. It is to be found at page 66 of the brief. It describes full particulars of the allegation of corrupt practice as defined u/s. 123(7) of the R.P. Act. In the column of name of the persons who committed corrupt practices, the sole respondent and her election agent Sri Anand Mohan have been arrayed. In the column of place where the respondent obtained the help of the District Magistrate-cum-Returning Officer, 'Muzaffarpur' has been mentioned. In the column of the date on which the respondent obtained the help of the District Magistrate-cum-Returning Officer is mentioned 1-5-1994. In the column of the persons whose help the respondent obtained, 'the District Magistrate-cum-Returning Officer of Muzaffarpur' has been mentioned. Certainly, Schedule-A lacks in full particulars of the alleged corrupt practices because it does not contain the nature of the help provided by the District Magistrate-cum-Returning Officer to the sole respondent. Paragraph 13 of the election petition states that the District Magistrate-cum-Returning Offi-

cer appointed Presiding Officers of the choice of the sole respondent at her instance but does not mention how many Presiding Officers of the choice of the sole respondent were appointed and who were they and where they were posted. There is not even the slightest allegation against the Presiding Officers, or for that matter, polling parties for conniving with the sole respondent in any manner in casting of votes at their respective polling stations on the day of polling. As regards locating of the venue of counting at L.S. College, there is nothing to indicate in what way the said venue was helpful to the sole respondent. There is no mention at which of the polling stations/booths more than 90% votes were polled, nor is there mention of how many ballot papers marked in favour of the election petitioner and other contesting candidates were mixed with those of the sole respondent and counted in her favour.

7. Likewise, in paragraph 14 alleging mixing of ballot papers marked in favour of Sri Ashok Kumar Singh and Sri Chandeshwar Prasad Singh with those marked in favour of the sole respondent and counting in her favour lacks in even proximate let alone accurate number of such ballot papers. In the same paragraph there is allegation of the counting agents of all the contesting candidates having been scared away by the election agent of the sole respondent. It is further alleged that the ballot papers of the election petitioner and other candidates were put in the bundles of doubtful ballot papers in very large number. The facts stated can hardly be said to be material facts coupled with full particulars because the date and hour of driving away the election agents of the contesting candidates is nowhere stated either in paragraph 14 or in Annexure-1 series which are copies of the petitions alleged to have been filed by the counting agents of the election petitioner and another candidate Ashok Kumar Singh; and a candidate Chandeshwar Prasad Singh himself. All the three petitions purported to have been filed on 30-5-1994, whereas the counting, admittedly, started on 29-5-94. Annexure 1/B does not mention the name/names of the person/persons or the goons of the sole respondent who did not allow the complainant, namely, the author of Annexure 1/B, to enter inside the counting hall.

8. Paragraph 15 contains general statements respecting non-observance of rules of the Conduct of Election Rules, 1961, relating to counting, etc., and thereby keeping the counting agents of the contesting candidates including the election petitioner at bay. Since there is no averment that the Returning Officer did so purposely on the request of the returned candidate or her election agent, such act can hardly come within the mischief of corrupt practice as defined u/s. 123 of the R.P. Act. Likewise, the statements contained in paragraph 16 of the election petition which deal with illegal rejection of genuine and valid votes polled in favour of the petitioner merits no consideration as an act of corrupt practice, besides being vague inasmuch as it lacks in number of such rejected votes even approximately. Annexure-2 which is part of paragraph 16 of the petition is equally vague and imaginative.

9. The allegations made in paragraphs 17 and 18 of the election petition respecting presence of muscle men of the sole respondent in the Constituency on 24-5-1994, i.e., two days before the actual polling and refusal of the Returning Officer to declare certain booths as sensitive and deployment of armed forces of B.S.F. and C.R.P.F. to ensure free and fair poll are equally bald and vague. There is no mention what booths the election petitioner sought to be declared as sensitive and the reason therefor nor is there mention of who were the goons of the Bihar Peoples Party and at what particular places their presence on 24-5-1994 had been noticed. Annexure-3 purports to be a petition dated 24-5-1994 penned by one Sharda Mal, an election agent of the election petitioner, addressed to the District Magistrate-cum-Returning Officer of the Parliamentary Constituency. It states that information had been received through reliable sources of the presence of undesirable elements in the Constituency and of plain clothed members of the Bihar Police taking active part in the election process. In my opinion, such allegation without giving any detail can be described as vague, if not imaginative. The contents of paragraph 19 respecting flag march of C.R.P.F. and B.S.F. in the Constituency a couple of days prior to the actual poll can hardly be stated to be an act of corrupt practice indulged by the authorities responsible for maintenance of law and order on the occasion of Parliamentary and Assembly polls unless there is something specific to suggest that it had been done purposely at the instance of the returned candidate to better his/her election prospect. There is no mention of the villages where the para-military forces had allegedly staged flag march to mar the electoral prospect of the election petitioner and brighten that of the sole respondent. The contents of paragraph 20 are also of the same nature inasmuch as they lack in specific names of person/persons who was/were supplied with firearms and explosive materials, etc. and of the suppliers.

10. Apart from the alleged corrupt practices of the District Magistrate-cum-Returning Officer in appointing Presiding Officers of the choice of the sole respondent, mixing of ballot papers marked in favour of the election petitioner and other contesting candidates, with those marked in favour of the sole respondent and counting the same in her favour, rejection of genuine votes polled in favour of the election petitioner and some other contesting candidates by the counting personnel, omission on the part of the District Magistrate-cum-Returning Officer of declaring certain booths as sensitive as suggested by the election petitioner and staging out flag march by the para-military forces in the area predominantly inhabited by the supporters of the election petitioner with a view to get them panicky and fear stricken, and the act of the sole respondent and her election agent Anand Mohan in driving away the counting agents of other contesting candidates from the counting hall, as stated in paragraphs 13 to 20, the election petitions has alleged corrupt practice on the part of the sole respondent and her election agent and goons by capturing booths on the day of the polling. Such allegation is contained in paragraph 21 of the election petition and appears to

be the anchor sheet of the grounds on which the election has been sought to be declared void. It is stated in paragraph 21 that the sole respondent captured booths and obtained "exclusively, votes in her favour by stamping illegally many booths during the broad day" fearlessly. Her armed men with the consent and direction of her election agent Anand Mohan captured as many as 1200 booths spread over all the six assembly segments of the Parliamentary Constituency in question. Her men exploded powerful bombs to terrorise the voters and polling agents of the petitioner as also the members of the polling party in their bid to capture the booths for getting all the votes marked in her favour. They also assaulted and scared away the polling agent of the election petitioner and thereafter obtained a large number of bundles of blank ballot papers from the polling party and after stamping the same in favour of the sole respondent consigned inside the ballot boxes kept at the polling stations. It is stated in the said paragraph that a large number of complaint petitions were handed over to the Returning Officer of the Constituency alleging such highhanded acts of the men and supporters of the sole respondent. Those complaint petitions are annexed to the election petition as Annexure-4 series and are found at pages 44 to 57 of the brief. All of them are typed ones bearing the signature of the election petitioner. They are dated 26-5-1994, except one at page 45 which purports to have been filed on 27-5-1997. In all those complaint petitions it has been alleged that some voters had informed that the men of Bihar Peoples Party had looted the booths mentioned in those petitions and deprived the poor section of the electorate from voting by driving them away (from polling stations). In none of those complaint petitions either the name or names of electorate or electorates has been mentioned, nor is there mentioned name/names of person/persons engaged in capturing the booths and terrorising the voters at particular polling stations. Even the time of such act of booth capturing has not been mentioned. Thus, these complaint petitions which are part of the election petition (see paragraph 22) do not fulfil the requirement of full particulars respecting the name of the parties alleged to have committed such acts of corrupt practice as also the date and time of such commission of corrupt practice as enjoined under clause (b) of sub-section (1) of section 83 of the R.P. Act.

11. In paragraph 21 the election petitioner has averred that full particulars of the corrupt practice of undue influence and booth capturing as stated in paragraph 21 is given in a separate list which is Schedule-B. Therefore, it is part of the election petition. Schedule-B is to be found at page 69 of the brief. In the column meant for the name of the persons who committed corrupt practices of booth capturing and undue influence "election agent of the sole respondent, namely, Anand Mohan, along with veteran and renowned criminals who were armed with lethal weapons and firearms in large number whose names are not known to the petitioner at present" is mentioned. Thus, except the name of Anand Mohan, nobody else has been named, who had accompanied him at the time of booth capturing. In the column meant for the place of booth capturing, booth nos. 38, 39, 36, 35, 1 and

2 of Vaishali Assembly segment, besides "Lalgari booth, Kanchanpur, Dhanukhi, Potaha, Khudhakhora, Vaishali and Paharpur" have been mentioned. No other polling station of any other assembly segment has been mentioned in Schedule-B where booths were allegedly captured and ballot papers snatched and marked in favour of the sole respondent, whereas in Annexures-4 series a large number of booths allegedly captured by the men and supporters of the sole respondent have been noted. Even in the election petition it has been alleged that nearly 1200 booths were captured by the men and supporters of the sole respondent at the behest of her election agent and husband Anand Mohan. In the column of date 26-5-1994 has been mentioned. No time has been mentioned against any of the booths allegedly captured by Anand Mohan with the help of criminals, as mentioned in column no. 1 of the schedule. One does not gather from the schedule that all those booths were located at one and the same place so that Anand Mohan and his men could have captured all of them simultaneously by driving away the electors, particularly the supporters of the election petitioner and other contesting candidates by show of force. If those booths were located at different and distant places as their numbers and names of villages of location mentioned in the schedule indicate, it was not possible for Anand Mohan to be present with his men at all places simultaneously. Therefore, the particular respecting the date which includes the time is certainly vague and if accepted may give a wide scope to the election petitioner and her witnesses to make improvement at the time of trial respecting the particular moment the captors were present at a particular booth. Of course, in the last column of the schedule certain electorates have been named, who were allegedly prevented from casting their votes due to the act of booth capturing. Therefore, by no standard, paragraph 21 and Schedule-B referred to therein can be taken to contain the full particulars of the corrupt practice of booth capturing, as required by section 83(1)(b) of the R. P. Act. They are entirely vague and frivolous and fit to be struck out.

12. The learned counsel for the sole respondent has further contended that the copy of the election petition served on the sole respondent is not the true copy of the petition in the eye of law inasmuch as the copy of the affidavit in Form 25 did not contain thereon the attestation that the affidavit was sworn in presence of the competent authority. According to him the proviso to sub-section (1) of section 83 of the R.P. Act enjoins that where the election petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. Rule 94-A of the Conduct of Election Rules, 1961, provides that the said affidavit shall be sworn before a Magistrate of the 1st Class, or a Notary or a Commissioner of Oath and shall be in Form 25. The learned counsel drawing my attention to the copy of the affidavit sworn by the election petitioner and found at pages 34 to 36 of the brief stated that the affidavit purports to have been sworn on 14-7-1997 before the Oath Commissioner but the copy thereof which had been

served on the sole respondent was not true copy inasmuch as the attestation of the Oath Commissioner in support of taking oath in his presence is not found thereon. When he was asked to furnish the copy of the election petition served, he filed a copy thereof along with a supplementary affidavit dated 12-8-1997. The copy of the said affidavit is to be found at pages 41 to 43 of the supplementary affidavit. This copy is not a true copy of the affidavit found at pages 34 to 36 of the brief inasmuch as the attestation made by the Oath Commissioner in support of making affirmation, etc., and that of the person identifying the deponent, are not found thereon. Relying on a decision of the apex Court in the case of Dr. (Smt.) Sipra & Ors. vs. Shanti Lal Khoiwal & Ors., A.I.R. 1996 S.C. 1691, it has been urged by the learned counsel for the sole respondent that on this ground alone the election petition is to be thrown out. In that case the apex Court has held that the allegations of corrupt practices are very serious imputations which, if proved, would entail civil consequences of declaring that he become disqualified for election to a maximum period of six years under Section 8-A, apart from conviction under Section 136(2). Therefore, compliance of the statutory requirement is an integral part of the election petition and true copy supplied to the returned candidate should as a sine qua non contain the due verification and attestation by the prescribed authority and certified to be true copy by the election petitioner in his/her own signature. The principle of substantial compliance cannot be accepted in the fact situation.

13. The contention on the face of it appeared to be very alluring. However, it was pointed out by the learned counsel for the election petitioner that the sole respondent has not produced the entire documents copies of which were served on her with summons. He pointed out that the brief will show that the election petition consisted of as many as 74 pages inclusive of the annexures and the required affidavit in Form 25, but the documents enclosed with the supplementary affidavit of the sole respondent filed in Court on 12-8-1997 do not comprise pages 73 and 74 of the copy supplied to him. On the other hand, the Annexure-A of the supplementary affidavit consists of only pages 1 to 72 of the election petition. In the counter-affidavit filed by and on behalf of the election petitioner on 28-9-1997 it was specifically mentioned in paragraph 6 thereof that the petitioner herself presented her election petition duly verified in the manner laid down in Form 25 and she has fully complied the statutory provision of the Act and the Rules framed thereunder. The affidavit in Form 25 is at pages 73-74 of the election petition. In paragraph 8 of the counter affidavit it was specifically stated that the respondent has herself removed pages 73-74 of the election petition for preparing a concocted ground for dismissal of the election petition. The petitioner had filed true copy of election petition containing pages 73-74 duly verified and attested by the petitioner on her own signature to be the true copy of the election petition as required under law. According to him, Annexure-A to the counter affidavit is, therefore, not the exact and the true copy of the election petition which had been

filed by the petitioner at the time of presenting the election petition because the respondent removed pages 73-74 from the copy of the election petition. In this connection it may be mentioned that the affidavit to be found at pages 34, 35 and 36 of the election petition, copy of which has been served on the sole respondent, is not the affidavit purported to be sworn in Form 25 in compliance with the provision of section 83(1) of the R.P. Act. It is an affidavit in support of the verified of the election petition and not of the particulars of corrupt practices. In fact of the statement on oath by the election petitioner in her counter affidavit that true copy of the affidavit sworn in Form 25 had been filed in Court and served on the sole respondent, it was expected that the latter should deny the same by filing reply on oath. However, the sole respondent has failed to do so. Therefore, the contention of the learned counsel for the election petitioner that true copy of the affidavit in Form 25 was actually served on the sole respondent and has been purposely withheld has to be accepted in view of non-denial by the sole respondent.

14. However, the problem of the election petitioner does end with this finding that the true copy of the affidavit in Form 25 had been served on the sole respondent. As indicated earlier, where the petitioner alleges any corrupt practice the election petition shall also be accompanied by an affidavit in the prescribed form, i.e. in Form 25, in support of the allegation of such corrupt practice and particulars thereof. The election petitioner purports to have filed along with the election petition affidavit in Form 25 which is to be found at pages 73-74 of the brief. The affidavit reads as under :

"I, Smt. Kishori Sinha the petitioner in the accompanying election petition calling in question the election of Smt. Lovely Anand (sole respondent in the said petition) make solemn affirmation/oath and say—

- (a) that the statements made in paragraphs xxxx of the accompanying election petition about the commission of the corrupt practice of xx xx and the particulars of such corrupt practices mentioned in paragraph xx xx of the same petition and in paragraphs xx xx of the Schedule annexed hereto are true to my knowledge.
- (b) that the statements made in paragraph 13 of the said petition about the commission of the corrupt practice of procuring and obtaining the help of the Gazetted Officer and the particulars of such corrupt practice given in paragraph 13 of the said petition and in paragraphs xx xx Schedule-A annexed thereto are true to my information.
- (c) that the statements made in paragraph 21 of the said petition about the commission of the corrupt practice of under influence and booth capturing and the particulars of such corrupt practice given in paragraph 21 of the said petition and in Schedule-B annexed thereto are true to my information.

(d) xx xx

Solemnly affirmed/sworn by Smt. Kishori Sinha at Patna this 14th day of July, 1994."

15. The affidavit surports to have been affirmed in presence of the Oath Commissioner before whom the dependent election petitioner was identified by the clerk of a senior Advocate. Part (a) of the affidavit required to contain affirmation respecting statements mentioned in the petition and Schedule or Schedules annexed hereto as true to the knowledge of the deponent. No paragraph of the election petition respecting the corrupt practice and particulars thereof has been mentioned in this part. Part (b) refers to statements made in paragraph 13 of the election petition about the commission of corrupt practice of procuring and obtaining help of a Gazetted Officer and particulars of such corrupt practice given in the said paragraph coupled with Annexure-A annexed thereto as true to the information of the deponent. Part (c) is likewise, affirmation as true to the information of the deponent of the contents of paragraph 21 of the election petition about commission of the corrupt practice of undue influence and booth capturing and the particulars of such corrupt practice given in the said paragraph and Schedule-B.

16. I have already indicated in foregoing paragraphs the contents of different paragraphs of the election petition. Paragraph 13 the contents of which are verified in the affidavit in Form 25 only, contains said statement of the sole respondent or occurring and obtaining help of the District Magistrate-cum-Returning Officer for furtherance of her success in election, like appointment of Presiding Officers of her choice, locating of the venue of the counting of ballot papers, reception of void votes in her favour, counting of invalid ballot papers of those booths where more than 90 per cent votes were polled, mixing of ballot papers of the petitioner and other contesting candidates with those of the sole respondent and counting them in her favour and commission of "other illegality" in counting for receiving success in her election". The particulars of some of those corrupt practices have been stated, albeit, vaguely, in paragraphs 14 to 20. But strangely enough in part (b) of the affidavit sworn in compliance with the provision of section 83(1) of the R. P. Act the contents of those paragraphs have not been affidavited by the deponent election petitioner. Similarly, paragraph 22 of the election petition contains statements of alleged material facts and particulars respecting booth capturing supported by Annexure-A series. Paragraphs 23 and 24 also contain statements respecting booth capturing by, or at the instance of, the sole respondent. Again in part (c) of the affidavit only the contents of paragraph 21 of the election petition and Schedule-B have been affidavited and not those of paragraph 22 to 24. Therefore, in my opinion, the affidavit in Form 25 to be found at pages 73-74 of the election petition is not in complete and strict compliance with the provision of section 83(1) of the R. P. Act. Therefore, the election petition solely resting on the ground of corrupt practices, must fail on this ground alone.

17. In view of what I have discussed above, I am inclined to, and do hereby, dismiss the election petition without being tried on the ground that the allegations of corrupt practice are entirely vague and frivolous; and lack in material facts and particulars; and whatever material facts and particulars have been averred therein are not duly affidavited by the election petitioner in Form 25 as required by the proviso to sub-section (1) of section 83 of the R.P. Act. Since the sole respondent failed to file any written statement and the election petition is dismissed on the ground of non-compliance with the statutory provision of section

83 of the R. P. Act and Rule 94-A of the Conduct of Election Rules, there shall be no order as to cost.

Sd/-
(C. S. CHAUBE)

PATNA HIGH COURT.
The 18th December, 1997.

[No. 82/BR/(194)98]
By Order,
B. N. CHAWLA, Secy.